

Remarks

Favorable reconsideration of this application is requested in view of the following remarks. For the reasons set forth below, Applicant respectfully submits that the claimed invention is allowable over the cited references.

The Office Action dated September 1, 2006 indicated that claims 1 and 18 stand rejected under 35 U.S.C. § 112(1); claims 1-8, 10-16 and 18 stand rejected under 35 U.S.C. § 102(e) over Atick *et al.* (U.S. Patent No. 6,111,517); claims 9 and 17 stand rejected under 35 U.S.C. § 103(a) over Atick *et al.* in view of Yee *et al.* (U.S. Patent No. 6,380,924); and claim 1-18 stands provisionally rejected under 35 U.S.C. § 101 over claim 1 of copending Application No. 10/041,756.

With respect to the Section 112, paragraph one rejection of claims 1 and 18 Applicant respectfully traverses the rejections. The Office Action appears to erroneously rely upon a limitation that a person be identified as unauthorized and/or as a person having a particular type or class of authorization that is lacking. Applicant is confused as to the basis for the Examiner's assertion that the claim language implicitly requires that an unauthorized person be identified. The adjective unauthorized modifies the word "person" and has no connotation regarding a step of identification. The claimed limitations are directed to detecting at least an unauthorized person; however, the claim language does not exclude the detection of authorized persons (*i.e.*, authorized persons do need not be detected to read on the claimed limitations), and thus, the identification of whether a person is unauthorized person is not implicit in (required by) the claim language. Applicant maintains that the subject limitations of claims 1 and 18 are fully supported in the specification. (*See, e.g.*, Specification at page 7, line 15). Accordingly, Applicant requests that the rejections be withdrawn.

With respect to prior art rejections under Section 102(e) of claims 1 and 18, Applicant respectfully traverses the rejections. Applicant submits that independent claims 1 and 18 are distinguishable from the '517 patent. The Examiner relies upon a hypothetical, frame-to-frame comparison without providing any reference that teaches the hypothetical frame-to-frame comparison. Thus, it appears the Examiner is asserting that this frame-to-frame hypothetical is either inherent in the '517 patent teachings or the

Examiner is taking official notice that the asserted the frame-to-frame hypothetical was well known.

To establish inherency, the extrinsic evidence “must make clear that the missing descriptive matter *is necessarily present in the thing described in the reference*, and that it would be so recognized by persons of ordinary skill.” *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 U.S.P.Q.2d 1746, 1749 (Fed. Cir. 1991) (emphasis added). “Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *Id.* at 1269, 20 U.S.P.Q.2d at 1749 (quoting *In re Oelrich*, 666 F.2d 578, 581, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981).

Applicant submits that the functionality described by the Examiner is not necessarily present in the cited portions of the ‘517 patent. More specifically, the Examiner asserts that tracking “consists of comparing the current frame of a video with a previous frame of a video.” Applicant submits that this assertion is irrelevant as the cited portions of the ‘517 patent do not teach tracking the movement of an unauthorized individual. Instead, the cited portion of the ‘517 reference teaches “continuously searching for individuals who have entered the field of view” and “continuously searching for the presence of a second, unauthorized individual.” It appears that the Examiner has erroneously interpreted the “tracking mode” taught by the cited portions of the ‘517 patent with tracking the movement of an unauthorized person. For instance, the cited portions ‘517 patent teaches a feature that “during tracking mode, continuously searches for additional individuals...” (Col. 8, lines 10-11). Applicant submits that while cited portions of the ‘517 reference teach a tracking mode that continuously searches for an individual and that the individual may move into the field of view, it does not teach detecting motion of the individual. Applicant submits that the detection of an individual in the field of view need not be based upon movement because the identification of facial features can be accomplished for each frame independently, and thus, the Examiner’s asserted frame-to-frame hypothetical is not inherent in the teachings of the cited portions of the ‘517 patent.

If the Examiner is making official notice of the frame-to-frame hypothetical, consistent with MPEP § 2144.03, Applicant respectfully requests evidence in support of the proposition that such teaching is well known in the prior art and that there is adequate evidence of motivation to combine this prior art with the main reference.

Moreover, the Examiner appears to be relying upon an erroneous interpretation of the teachings of the '517 patent. More specifically, the Examiner asserts that the '517 patent uses motion detection in the process of detecting the presence of unauthorized individuals. Applicant submits that the cited portions of the '517 patent only teach detection (*i.e.*, facial recognition) of an unauthorized individual. Applicant further submits that the cited portions of the '517 patent do not teach that motion detection is a part of the process of facial recognition for an unauthorized individual. Accordingly, the Examiner has failed to provide support for the assertion that a motion component is taught for this process. Instead, the cited portions of the '517 patent merely teach searching for an unauthorized individual by scanning images received from a camera. As discussed above, the Examiner has not provided adequate support for a hypothetical frame-to-frame comparison that would be used to detect motion. Moreover, Applicant submits that the Examiner has not provided support for the assertion that such a process is taught to detect motion because the cited portions of the '517 patent do not teach any distinction between the detection of an unauthorized individual that is stationary and the detection an unauthorized individual that is moving.

Accordingly, Applicant submits that because the Examiner has failed to show that the '517 patent teaches correspondence to limitations directed to detecting the presence of an unauthorized person "by sensing one of heat, motion and sound," claims 1 and 18 are patentably distinct from the '517 patent teachings. Moreover, claims 2-8 depend from claim 1 and therefore contain all the limitations of claim 1. Accordingly, Applicant requests that the rejections to claims 1-9 and 18 be withdrawn.

With respect to prior art rejections under 35 U.S.C. § 102(e)) of claims 10-17, Applicant respectfully traverses the rejections. The claimed invention is limited to "means for automatically detecting a person" and pursuant to § 112(6), Applicant submits that such "means" (*i.e.*, the disclosed structure (and its equivalents) set forth in the

Specification as being exemplary structure for the associated function of searching) has nothing to do with the '517 patent teaching concerning recognition of faces in an image from a video camera. Moreover, the citation of the '517 patent has to do with recognition of a face from a prestored set of faces for comparison, or use of the video camera searching for the "presence of a second, unauthorized individual" which would be a person not in the prestored set of faces. Applicant submits that the detection means is supported by the Specification at page 7, line 15, which contemplates the use of "heat, motion, light variations and sound," at page 8, line 22 to page 9, line 6, which discusses a detection module (*e.g.*, block 220 of FIG. 2) configured to detect a person crossing into zone 114 using one of "a heat/infrared sensor, a motion detector, a sound detector and a light detector configured to detect variations in light." Moreover, page 9, lines 7-17 show that the detection module can include a detection software application to reconfigure a display processor. Applicant submits, that the cited portions of the '517 patent fail to teach such a detection module.

Moreover, the Examiner's assertion that the camera taught by the '517 patent detects motion is not supported by the cited reference. Instead, the '517 patent teaches a simple video camera (*i.e.*, 150 of FIG. 1) that passes image data to the display processor 110. (*See, e.g.*, Col. 3, line 49 to Col. 4 line 9). Applicant submits that mere recording and transmission of images by a camera does not constitute the detection of motion. Thus, for these reasons and for the reasons discussed above in connection with independent claims 1 and 18, the prior art video camera operation does not detect movement of an unauthorized individual. Thus, the '517 patent is not in any way equivalent, and is not enabling for the invention set forth in claims 10-17. Therefore, Applicant submits that the claimed invention is patentably distinct from the cited prior art and requests that the rejections to claims 10-17 be withdrawn.

With respect to the § 103(a) rejection, Applicant respectfully traverses. The combined teachings do not correspond to the invention of either claim 9 or 17. Claim 9 is dependent from claim 1 and as discussed above, the claimed invention is limited to detecting the presence of an unauthorized person "by sensing one of heat, motion and sound". Applicant submits that the cited references fail to teach any such limitation.

Moreover, claim 9 is directed to the step of enabling a key-stroke tracking application for tracking keystrokes after automatically detecting a person. The Examiner appears to mischaracterized the teachings of at least the '924 patent. The Examiner erroneously states that the cited portion of the '924 patent teaches a background process that is running on a computer; however, Applicant submits that the cited portions of the '924 patent teach a Mouse/keyboard Capture Recorder (MCR) device that is placed between a keyboard and the computer, as shown in FIG. 2. Accordingly, the Examiner's asserted combination is not supported by the cited references, and further, the asserted combination would be inoperable, as the cited portions of the '924 patent do not teach or suggest that the MCR device can be enabled via an application running on the computer.

With respect to claim 17, it is further distinguishable because it is limited to § 112(6) and because it depends from claim 12 (and also claims 10 and 11) which is also distinguishable based on § 112(6) and the corresponding structures set forth in the specification. As discussed above, the claimed invention is limited to "means for automatically detecting a person" and pursuant to § 112(6), Applicant submits that such "means" has nothing to do with searching for recognizable faces in a video camera as in the '517 patent.

Accordingly, Applicant requests that the rejections to claims 9 and 17 be withdrawn.

With respect to the double patenting rejection, Applicant would consider submitting a terminal disclaimer should the copending application issue. Until then, Applicant submits that all the rejections have been overcome and that the present application has a filing date filed that is prior to the filing data of the copending Application, and therefore, requests that this provisional rejection be withdrawn as required by MPEP § 804.

In view of the above discussion, Applicant believes that the rejection has been overcome and the application is in condition for allowance. A favorable response is requested. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is encouraged to contact the undersigned at (651) 686-6633.

Respectfully submitted,

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